

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Mark Nunez, et al.,

Plaintiffs,

-against-

The City of New York, et al.,

Defendants.

NOTICE OF MOTION

Case No. 11-cv-5845 (LTS)(JCF)

PLEASE TAKE NOTICE that upon the annexed Memorandum of Law dated January 25, 2023, Declaration of Mary Lynne Werlwas dated January 25, 2023 and the exhibits annexed thereto and upon all prior pleadings, the Plaintiff Class, by their counsel The Legal Aid Society Prisoners' Rights Project and Emery Celli Brinckerhoff Abady Ward & Maazel LLP, will move this Court, before the Honorable Laura Taylor Swain, United States District Judge for the United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York, for an Order:

1. Holding Defendant in civil contempt of Court for its failure to comply with the Second Remedial Order ¶ 1(i)(c).

2. With respect to New Admissions, ordering:

A. Defendants shall provide the parties with live access to the Dashboard system for new admission tracking, so the parties can independently and contemporaneously oversee the Department's compliance.

B. Defendants shall demonstrate the reliability of the Dashboard system by conducting weekly audits which will compare a representative sample of data on the Dashboard to video evidence of incarcerated individuals' movements and other

objective data. These audits will be provided to the parties and the Court (by filing on the docket) within one week of each audit's completion. Defendants may redact from the docket any identifying information for an incarcerated person.

C. Defendants shall generate weekly reports regarding new admissions intake which indicate: 1) the total time it took to process each new admission; 2) whether the clock was "stopped" for that new admission; 3) if so, the length of the stoppage; and 4) if so, whether the clock was stopped due to a refusal, a court appearance, a hospital visit, the posting of bail, or for another specific reason.

D. Defendants shall provide the above-described reports to the parties and the Court (by filing on the docket) within one week of the end of the week reported on. Defendants may redact from the docket any identifying information for an incarcerated person.

3. With respect to Intra-facility Transfers, ordering:

A. Defendants must establish a reliable tracking system for the amount of time intra-facility transfers spend in intake areas by March 15, 2023.

B. Beginning immediately and continuing until March 15, 2023, the Department shall report to the parties and the Court (by filing on the docket) every two weeks on its progress toward meeting the March 15 deadline, including but not limited to: 1) the number of personnel trained on the ITS system; 2) a description of the content of training provided; 3) the number of personnel who still remain to be trained; 4) any technological or logistical improvements made toward a reliable ITS system; and 5) what technological or logistical improvements still remain to be made.

C. Beginning on March 15, 2023 at the latest, Defendants must demonstrate the reliability of the ITS tracking system by conducting weekly audits that compare a representative sample of the data recorded through the system to video of incarcerated individuals' movements. The results of such audits must be provided to the parties and the Court (by filing on the docket) within one week of each audit's completion. Defendants may redact from the docket any identifying information for an incarcerated person.

D. Beginning on March 15, 2023 at the latest, Defendants shall generate weekly reports regarding intra-facility transfer stays in intake areas, which indicate: 1) the total time each person spent in any intake area during the transfer process; 2) how much of that time was spent in the intake area of the facility from which the person was moved; and 3) how much of that time was spent in the intake area of the facility to which the person was moved.

E. Defendants shall provide the above-described reports to the parties and the Court (by filing on the docket) within one week of the end of the week reported on. Defendants may redact from the docket any identifying information for an incarcerated person.

4. For such other relief as this Court deems just and proper.

5. Counsel for Plaintiff Class certify that they have used their best efforts to resolve informally the matters raised in this Motion.

PLEASE TAKE FURTHER NOTICE that, in accordance with this Court's Order of January 13, 2023, Defendant shall file their opposition to this motion by February 8, 2023, and Plaintiffs shall file their reply by February 15, 2023. *See* Dkt. No. 497.

Dated: January 25, 2023
New York, New York

THE LEGAL AID SOCIETY

/s/ Mary Lynne Werlwas

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